

[SPECTRA LETTERHEAD]

May 16, 2013

Mr. Michael F. Brennan
U.S. Department of State
Energy Resources Bureau
Office of Energy Diplomacy
North America/Arctic
2201 C. Street, NW
Washington, DC 20520

Re: Issuance of New Presidential Permit to Express Pipeline LLC

Dear Mr. Brennan:

Pursuant to your letter of May 2, 2013, Spectra Energy Corp (“Spectra Energy”) hereby submits this application for a new or amended Presidential Permit for Express Pipeline LLC (“Express”). Express holds a permit issued by the U.S. Department of State (the “Department”) authorizing it to construct, connect, operate, and maintain a pipeline crossing the international boundary between the United States and Canada (the “2004 Permit”). As you know from previous correspondence, on March 14, 2013, Spectra Energy acquired the upstream entities that own Express (“the Upstream Acquisition”). In addition, Spectra has decided to implement an internal corporate restructuring involving the upstream entities that own Express (the “Restructuring”).

As detailed below, neither the Upstream Acquisition nor the Restructuring (collectively, the “Transaction”) involves any new construction at the permitted facilities, and the operation and maintenance of the facilities will remain substantially the same. Accordingly, the Transaction has no material effect on the use of the facilities and no environmental impact. In granting Express the 2004 Permit, the Department already found that “issuance of [the] permit to the applicant would serve the national interest.”¹ Because the Transaction has no effect on the facts the Department relied on in granting the 2004 Permit, Spectra Energy requests that the Department issue to Express a new or amended Presidential Permit reflecting the Transaction but otherwise making no material change to the terms and conditions of the 2004 Permit.

I. Background

Spectra Energy owns and operates a large and diversified portfolio of natural gas-related energy assets and is one of North America’s leading natural gas infrastructure companies. Spectra Energy operates in three key areas of the natural gas industry: gathering and processing,

¹ Executive Order 13337, 69 Fed. Reg. 25299 (May 5, 2004).

transmission and storage, and distribution. Its natural gas pipeline systems consist of over 19,000 miles of transmission pipelines.

The Express Pipeline System is a 1,717 mile oil transportation network that connects Canadian and United States crude oil producers to refineries in the Rocky Mountain and Midwest regions of the United States. The Express Pipeline System consists of two crude oil pipelines: the Express Pipeline and the Platte Pipeline. The Express Pipeline has been in operation since 1997 and transports crude oil from Hardisty, Alberta, Canada, to Casper, Wyoming.² The facilities of the Express Pipeline are owned by two entities: Express and Express Pipeline Limited Partnership. Express owns the U.S. segment of the Express Pipeline and holds the Permit; and Express Pipeline Limited Partnership owns the Canadian segment of the Express Pipeline.

Express Pipeline Partnership originally applied for a Presidential Permit on May 10, 1996, which the Department granted on August 30, 1996.³ On August 1, 2001, Express Pipeline Partnership was converted into a domestic limited liability company under Delaware law and was renamed Express Pipeline LLC.⁴ On April 5, 2002, certain upstream owners of Express underwent a transaction by which EnCana Corporation (“EnCana”) became the sole owner of the equity interests in Express. On August 26, 2002, Express Pipeline LLC notified the Department of the upstream change of ownership.⁵

On January 9, 2003, a consortium of investors—including Terasen Inc., Ontario Municipal Employees Retirement System, and Ontario Teachers’ Plan Board—acquired from EnCana all outstanding shares of Express.⁶ On January 9, 2004, Express filed an application for a Presidential Permit to construct six new pump stations.⁷ Express revised the application on May 3, 2004, to include the construction of two new storage tanks.⁸

Following the May 3, 2004 amendment, the Department raised certain questions regarding (a) the statutory conversion of Express Pipeline Partnership into Express Pipeline LLC

² The Platte Pipeline has been in operation since 1952 and transports crude oil from Casper, Wyoming to Wood River, Illinois.

³ A draft of the 1996 Express Pipeline Partnership Application for a Presidential Permit is attached as Attachment A. The 1996 Presidential Permit is attached as Attachment B. As described in more detail below, the current Presidential Permit is issued to Express Pipeline LLC.

⁴ A copy of a May 13, 2004 letter from outside counsel for Express to the Department noting the change is attached as Attachment C.

⁵ A copy of the August 26, 2002 letter is attached as Attachment D.

⁶ See Attachment C.

⁷ The January 9, 2004 cover letter for the application is attached as Attachment E. A copy of the application itself is attached as Attachment F.

⁸ A copy of the May 3, 2004 cover letter is attached as Attachment G. The revised application is attached as Attachment H.

and (b) the January 3, 2003 change in upstream ownership (the acquisition by Terasen Inc., Ontario Municipal Employees Requirement System and Ontario Teachers' Planning Board of all of EnCana's shares in, and ultimate control of, Express Pipeline LLC). In response, Express amended its May 3, 2004 application to request a transfer of the permit from Express Pipeline Partnership to Express Pipeline LLC. The Department noticed Express's application on June 16, 2004.⁹ The Department granted Express's application on September 27, 2004. A copy of the 2004 Permit is attached hereto as Attachment K.

II. Description of the 2004 Permit and the United States Facilities it Covers.

As described in the 2004 Permit, the permitted facilities consist of the following major components:

- An existing 515-mile 24-inch crude oil pipeline running from near Wild Horse, Montana on the border with Canada to Casper, Wyoming that included five pump stations.
- Three pump stations on public land (one in Montana and two in Wyoming) that were authorized by the Bureau of Land Management at the time of issuance of the original Presidential permit to Express Pipeline Partnership.
- Three pump stations on private land in Montana.
- Metering facilities as required by the Commissioner of Customs.

When issuing the 2004 Permit, the Department found that the construction of the proposed additional pump stations along the existing, permitted Express Pipeline right-of-way would result in the expansion of capacity necessary to enable Express to transport additional petroleum to these markets. "Without greater supply diversity and reliability of access to additional supply, the potential that the consumer will enjoy the availability of more competitively priced refined products could be substantially reduced and the refiners' ability to comply with more rigorous refined product specifications could be hindered."¹⁰

In addition to authorizing the installation of the six new pumps, the 2004 Permit requires that Express comply with various conditions. Of particular relevance to this application:

- Express shall make no substantial change in the location of the facilities or in the operations authorized by the Permit without prior Department approval (Article 1).
- Express must operate and maintain the facilities in all material respects as described in its permit application (Article 2).

⁹ Express's amended 2004 application is attached as Attachment I. The Department's notice in the Federal Register is attached as Attachment J. *See also* 69 Fed. Reg. 33691 (2004).

¹⁰ *Notice of Finding of No Significant Impact and Summary Environmental Assessment: Express Pipeline in Montana and Wyoming*, 69 Fed. Reg. 59292-59293 (October 4, 2004).

- Express must comply with all applicable Federal and State laws and regulations (Article 4) and Federal filing requirements (Article 12).
- Express shall maintain the facilities in a condition of good repair for their safe operation (Article 10).

The 2004 Permit also contains a provision relating to the ownership and control of the permitted facilities. Article 9 of the 2004 Permit provides:

In the event of transfer of ownership or control of the United States facilities or any part thereof, this permit shall continue in effect temporarily for a reasonable time pending submission of a proper application by the transferee for a new and permanent permit, provided that notice of such transfer is given promptly in writing to the Department of State accompanied by a statement by the transferee under oath that the United States facilities and the operation and maintenance thereof authorized by this permit will remain substantially the same as before the transfer pending issuance to the transferee of a new and permanent permit.

The Department has determined that the Upstream Acquisition triggers the change-of-control provisions of Article 9. Consequently, Spectra Energy hereby requests a new or amended Presidential Permit for both the Upstream Acquisition and the Restructuring, both of which are described in more detail below.

III. Description of the Transactions Resulting in the Instant Application.

Pursuant to a Securities Purchase Agreement dated December 10, 2012 (a copy of which was filed on December 11, 2012 by Spectra Energy with the U.S. Securities and Exchange Commission (“SEC”) as exhibit 2.1 to its Current Report on Form 8-K), Spectra Energy, through certain of its subsidiaries, proposed to purchase all of the outstanding equity and debt interests in the upstream companies that indirectly own, through various subsidiaries, the Express Pipeline System, including Express. On March 14, 2013, the Transaction closed. Spectra Energy (through its subsidiaries Spectra Energy Express (US) GP, LLC and Spectra Energy Express Holding, LLC) purchased all of the outstanding equity and debt interests in Express US Holdings LP from the then-current consortium of owners, BPC Penco Corporation, Ontario Teachers’ Pension Plan Board and Kinder Morgan Energy Partners, L.P. Immediately following the Upstream Acquisition, Spectra Energy became the 100 percent owner of the upstream entities that own Express, including Express Holdings (USA), Inc., which was converted to a limited liability corporation.¹¹

Spectra Energy also intends to implement an internal restructuring, contributing 40% of its ownership interests in Express Holdings (USA), LLC (“Express Holdings”) to Spectra Energy Partners, LP (“SEP”). Express Holdings is the direct parent of Express and Platte Pipe Line

¹¹ Attached as Attachment L is a simplified organization chart reflecting the upstream ownership of Express prior to the Upstream Acquisition. Attached as Attachment M is a simplified organization chart reflecting Spectra Energy’s ownership of the relevant corporate entities following the Upstream Acquisition.

Company LLC, and SEP is a publicly-traded master limited partnership. Spectra Energy indirectly owns approximately 58% of the ownership interests in SEP. The remainder of SEP's ownership interests is publicly traded.¹² Spectra Energy also indirectly owns 100% of the General Partner of SEP, Spectra Energy Partners (DE) GP, LP, thereby providing Spectra Energy with control over SEP. The remaining 60% interest in Express Holdings will continue to be owned by Spectra Energy through various subsidiaries. Thus, following the completion of the Restructuring, Spectra Energy and SEP, together, will own, directly or indirectly, 100% of Express.¹³

IV. The United States Facilities and Their Operation and Maintenance Will Remain Substantially the Same Now That Spectra Energy has Acquired the Upstream Entities that Own Express.

The Department approves permit applications where it finds “that issuance of a permit to the applicant would serve the national interest,”¹⁴ and made such a finding when it issued the 2004 Permit. The above-described Transaction does not alter that finding and results in no departure from the conditions imposed in the 2004 Permit. Specifically:

1. Neither Spectra Energy nor Express will make any change in the location of the cross-border facilities or any material change in their operations without Department approval.
2. Spectra Energy and Express will operate and maintain the cross-border facilities in all material respects as described in the 2003 application that resulted in the 2004 Permit.
3. Spectra Energy and Express will comply with all applicable Federal and State laws and regulations and Federal filing requirements.
4. Spectra Energy and Express will maintain the facilities in a condition of good repair for their safe operation (Article 10).

Spectra Energy recognizes that the Transaction does not in any way alter Express's obligations to comply with—or the Department's ability to enforce—the terms and conditions of the 2004 Permit while the Department reviews the instant application. Pursuant to Article 9, Attachment O to the instant application is the affidavit of Duane Rae of Spectra Energy affirming that the operation and maintenance of the permitted facilities authorized by the 2004 Permit will remain substantially the same as before the Transaction.

¹² SEP's Form 10-K is publicly available on the SEC's website. On May 3, 2013, SEP filed a Form 8K notifying the SEC of Spectra Energy's restructuring and SEP's entry into a material definitive agreement related to Express.

¹³ Attached as Attachment N is a simplified organization chart reflecting Spectra Energy's ownership of the relevant entities following the contemplated Restructuring.

¹⁴ Executive Order 13337, 69 Fed. Reg. 25299 (May 4, 2004).

Spectra Energy has no plans for Express to operate or maintain the United States facilities covered by the 2004 Permit in any manner not currently covered or contemplated by the 2004 Permit. Moreover, because the transactions described in this application are simply changes in upstream ownership, with no material changes to the facilities, no material change in the operation or maintenance of these facilities, and no new environmental impacts, Spectra Energy respectfully submits that the national interest would be served by the continued operation of the Express Pipeline consistent with the terms and conditions of the 2004 Permit. Therefore, Spectra Energy requests that the Department issue a new or amended Presidential Permit reflecting the modified ownership structure of Express, but otherwise retaining the same terms and conditions as the 2004 Permit

If you have any questions concerning the foregoing or require additional information, please contact me at (713) 627-5241.

Respectfully submitted,

SPECTRA ENERGY CORP
SPECTRA ENERGY PARTNERS, LP

By:

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Associate General Counsel